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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JOSEPH W. GLAMUZINA and LINDY N.
11 GLAMUZINA, husband and wife and the
marital community of them comprised,,
12

Plaintiffs,

13 v.

14 GLENS FALLS INSURANCE COMPANY, a
15 New York corporation,
16

Defendant.

Case No. C07-5011 FDB

ORDER OF REMAND TO PIERCE
COUNTY SUPERIOR COURT

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18 This matter comes before the Court on Defendant's motion to remand to Pierce County
19 Superior Court. In response, the Plaintiff agrees that remand is appropriate. After reviewing all
20 materials submitted by the parties and relied upon for authority, the Court is fully informed and
21 hereby grants Defendant's motion and remands this case to the state court.

22 **Background**

23 This lawsuit involves the administration of an insurance claim submitted by the insured,
24 Plaintiff Joseph and Lindy Glamuzina, to their insurance carrier, Glens Falls Insurance Company for
25 the theft loss of an automobile. Upon denial of the insured's claim, Plaintiffs commenced an action

1 for insurance coverage in Pierce County Superior Court.

2 On January 9, 2007, Defendants removed the lawsuit to this Court on the grounds of subject
3 matter jurisdiction based upon the diversity of citizenship of the parties. Plaintiffs are residents of
4 Washington and Defendant is incorporated in another jurisdiction. The notice of removal states that
5 because of the asserted causes of action for breach of the insurance contract, bad faith, violation of
6 the Washington Consumer Protection Act, breach of fiduciary duty, negligence, and request for an
7 award of attorneys fees, it was Defendants' belief that Plaintiff sought damages in excess of
8 \$75,000.00. The Plaintiff did not contest removal.

9 On June 19, 2007, subsequent to the substitution of new counsel for Plaintiff, an Amended
10 Complaint was filed. Although this amended complaint essentially re-alleged the same causes of
11 action, this complaint stated that the amount of insurance coverage at issue was an agreed policy
12 value of \$35,000.00.

13 On July 10, 2008, Plaintiff's extra-contractual claims were dismissed by this Court.

14 Recognizing that the federal jurisdictional amount is lacking, Defendant, with the agreement
15 of Plaintiffs, moves for remand to Pierce County Superior Court.

16 Discussion

17 Any civil action may be removed to federal district court so long as original jurisdiction
18 would lie in the court to which the case is removed. 28 U.S.C. § 1441(a). This Court has original
19 jurisdiction over "all civil actions where the matter in controversy exceeds the sum or value of
20 \$75,000, exclusive of interest and costs, and is between ... citizens of different States." 28 U.S.C. §
21 1332(a)(1). To determine whether the amount in controversy has been met, the status of a case as
22 disclosed by a plaintiff's complaint is controlling in the case of a removal. Paschinger v. MGM Grand
23 Hotel-Las Vegas, Inc., 802 F.2d 362, 363-64 (9th Cir. 1986). Where it is not facially evident from
24 the complaint that more than \$75,000 is in controversy, the removing party must prove, by a
25 preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold.

1 Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003). “If it is unclear
2 what amount of damages the plaintiff has sought ... then the defendant bears the burden of actually
3 proving the facts to support jurisdiction, including the jurisdictional amount.” Gaus v. Miles, Inc.,
4 980 F.2d 564, 566 (9th Cir. 1992).

5 “If at any time before final judgment it appears that the district court lacks subject matter
6 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). The removing Defendant now seeks
7 remand on the basis that the jurisdictional amount of more than \$75,000.00 in controversy is lacking.
8 The Plaintiff is in agreement that remand is appropriate. Accordingly, this Court finds that it lacks
9 jurisdiction and that remand is appropriate.

10 ACCORDINGLY;

11 IT IS ORDERED:

12 Defendant’s Motion to remand to Pierce County Superior Court [Dkt. #54] is GRANTED.

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14 DATED this 2nd day of October, 2008.

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18 FRANKLIN D. BURGESS
19 UNITED STATES DISTRICT JUDGE
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